use and approval of layout plans being obtained by the owners of No. 10, namely the 1st defendants.

Instance (iii). There is no evidence to support these allegations. In fact the evidence on record negatives these allegations. The evidence of the Assistant Manager of the plaintiff bank is that, far from there being a bid for $1,256,213, at the auction, there was no bid at all and her evidence is supported by Exhibit P12 which records that on the date of the live auction, namely December 16, 1976 "the opening request was for a bid of $880,000. No bids were offered".

Instance (iv). Here the plaintiffs did in fact sell No. 10 by private treaty for the sum of $1,024,955.32 as alleged. The gravamen of the charge is that it was sold at an undervalue. It is in evidence that before this sale the plaintiffs had not obtained a valuation. The question here is whether the plaintiffs should reasonably have sold No. 10 at this price or at some other higher figure. The evidence adduced at the trial and which is relevant to this aspect of the matter is as follows:— (1) Exhibit P10 states that the appraised value of No. 10 in August 1975 was $1,418,305 on existing "use" basis. (2) Solicitors' letter dated July 23, 1976 written on behalf of the 1st defendant company and all the three guarantors who were also its directors to the solicitors of the plaintiffs which states, *inter alia,* that the price of $1.5 million for No. 10 is above the current market value (Exhibit P25). (3) No bids were offered for No. 10 at a live auction on December 16, 1976, although the opening request by the auctioneer was for a bid of $880,000. (4) The evidence of the Assistant Manager of the plaintiff bank at page 35F of the record regarding the sale of No. 10 to the Urban Renewal Authority in July 1977 which runs as follows:—

"Eventually property sold on a residential basis for $1 million; property market fell at that time."

The evidence that "property market fell at that time" was not challenged by the 4th defendant.

As it is the 4th defendant who is alleging that No. 10 was sold at an undervalue the burden of proof is on her. She, however, did not see fit to produce expert independent evidence to say that when No. 10 was sold to the Urban Renewal Authority it was at an undervalue. In these circumstances and on the evidence before the court we are in no position to say whether the plaintiffs had in fact sold No. 10 at an undervalue. We are of the view that the 4th defendant had not discharged her burden of proof.

As regards her contention that the plaintiffs acted in the said sale without her knowledge and/or consent and that she had not been kept informed of such sale by the plaintiffs we are of the view that neither in law (*G. Merel & Co. Ltd.* v. *Barclays Bank*[2]) nor under the guarantee are there any such obligations owed by the plaintiff bank to the guarantor. In the case of a mortgage "It is now clearly established that a mortgagee, when exercising his power of sale, owes a duty to the mortgagor to take reasonable care to obtain a proper price. The burden of proof is on the mortgagor to prove breach of this duty by the mortgagee" (*Fisher & Lightwood's* Law of Mortgage (9th Edn.) page 368). See also *Cuckmere Brick Co. Ltd. & Anor.* v. *Mutual Finance Ltd.*[3] Beyond this duty the mortgagee has no duty to inform or obtain the consent of the mortgagor or keep him informed of the sale of the mortgaged property. In the instant case the rights and duties of the plaintiff bank and of the 4th defendant are governed by the guarantee. There is no provision in the guarantee which requires the plaintiffs to inform or obtain the consent of the 4th defendant or keep her informed of the sale of the mortgaged property. However, we are of the view that there is an implied term in the contract of guarantee whereby the bank, in whose favour the guarantee is given has a similar duty to the guarantor, as indeed it has to the mortgagor, whose property is being sold under its power of sale, to take reasonable care to obtain a proper market price. As we have said before there is no evidence that No. 10 was sold at an undervalue.

For these reasons the appeal must be allowed with costs here and below.

Appeal allowed.

Solicitors: *Rodyk & Davidson; J.B. Jeyaretnam & Co.*

T.H. LTD. v. THE COMPTROLLER OF INCOME TAX

[D.C.A. (Chua J.) January 14, 1981]

[Singapore — District Court Appeal No. 39 of 1979]

Revenue Law — Property tax — Change in "treatment of an item of expense" — Change disallowed by Board — Onus on company to show good reason for change — Board's decision affirmed by court — Income Tax Act (Cap. 141), s. 83(3).

Property Tax — Question of law — Reliance by court on evidence of accountants — Evidence of accountants not conclusive.

The present appeal arose from a Notice of Assessment, 1975, against which assessment the company appealed to the board which dismissed the appeal with costs. The company then appealed to the court.

The company, a public company, carried on business as a housing developer. Since its incorporation (in 1970), the company purchased various parcels of land, some of which were developed while the others were held in its "land bank". As a consequence of a slump in the property market prevailing in Singapore around 1974, several development projects were halted in midstream and were delayed for about five years.

In its accounts pertaining to its various development projects the company had adopted the "completed contract" cost accounting system, whereby profit is recognised only when the contract or project is completed. Under this system, expenditure incurred in a development together with receipts from booking fees and progress payments are accumulated during the course of the project and profit is not reported until the project is substantially completed.

For the accounting years 1970 to 1973 property tax incurred annually in respect of properties held by the company was "capitalised" in the balance sheet as part of the overall development expenditure and did not appear in the profit and loss accounts. However, for the financial year 1974, payments of property tax were for the first time treated as an item of expenditure and charged into the debit side of the profit and loss account. Property tax amounting to $253,980 was claimed as an item of allowable expenditure

under section 14 of the Income Tax Act (Cap. 141) against income of the company. This change of treatment of property tax payment was not allowed by the Comptroller of Income Tax.

The dispute in the present appeal is concerned not with the question whether the property tax is an allowable deduction but rather with the question of when the property tax should be allowed as a deduction.

Held, dismissing the appeal: (1) in a dispute where the ascertainment of the taxpayer's income for any year involves the application of completing methods or practices of accounting, the taxpayer can only discharge his onus under section 80(3) of the Income Tax Act by proving that the accounting practice on which the Comptroller has based his assessment is wrong;

(2) it is not sufficient for the taxpayer merely to prove that the taxpayer's practice is also correct. In this case the company must go further and prove that its former method of accumulating property tax in respect of each project until the completion of the particular housing project was wrong and should be changed;

(3) in this case, the Board is quite correct that if a particular method of accounting has been applied consistently in the past it should not be changed unless good reason is shown for that change;

(4) it is an established principle that the ascertainment of a taxpayer's income for tax purposes is primarily a question of law for the sole decision of the court. In determining the property tax treatment of a transaction the court may have recourse to the evidence of accountants. But the evidence of accountants, in itself, can never be conclusive in a question of law;

(5) the reasons brought forward by the company before the Board did not justify a change in its treatment of property tax and the Board was correct in holding that the company had failed to discharge the onus that its former treatment of property tax was wrong and must be changed.

Cases referred to:-

(1) *Duple Motor Bodies Ltd.* v. *Ostime* [1961] 2 All E.R. 167; 39 T.C. 537.

(2) *BSC Footwear Ltd.* v. *Ridgway* (1971) 47 T.C. 495.

(3) *Minister of National Revenue* v. *Anaconda American Brass Ltd.* [1956] 1 All E.R. 20.

(4) *Heather* v. *P.E. Consulting Group Ltd.* 48 T.C. 293 @ 322 & 323.

INCOME TAX BOARD OF REVIEW.

Andrew Ang for the appellant.

Loo Lian Ee (Miss) (State Counsel) for the respondent.

Michael Khoo D.J. (Chairman) (delivering the judgment of the Board): The appellant company was incorporated on April 15, 1970 as a public company, carrying on business as a housing developer.

From the time of its incorporation the company purchased various parcels of land, some of which were developed while the others were held in its "land bank". As a consequence of a slump in the property market prevailing in Singapore around 1974, several development projects were halted in mid-stream and were delayed for about five years.

In its accounts pertaining to its various development projects the company has adopted the "completed contract" cost accounting system, whereby profit is recognised only when the contract or project is completed. Under this system, expenditure incurred in a development together with receipts from booking fees and progress payments are accumulated during the course of the project and profit is not reported until the project is substantially completed.

Each project is treated separately and individual cost records are kept for each project. Development expenses are then capitalised in the balance sheet and are accumulated and carried forward from year to year until the project is completed. Upon completion all the expenses attributable to a particular project are deducted from proceeds of sale, with net profits assessed to tax.

For the accounting years 1970 to 1973 property tax incurred annually in respect of properties held by the company was "capitalised" in the balance sheet as part of the overall development expenditure and did not appear in the profit and loss accounts.

For the financial year 1974 however, payments of property tax were for the first time treated as an item of expenditure and charged into the debit side of the profit and loss account. Property tax paid amounting to $253,980 was claimed as an item of allowable expenditure under section 14 of the Income Tax Act (Cap. 141) against income of the appellant company.

This change in treatment of property tax payment was not allowed by the Comptroller of Income Tax on the grounds that property tax paid was not in the production of income assessable to tax, that it was paid in respect of properties that were being developed and should therefore form part of the cost of development, and that as the development projects were dealt with on a project basis, all direct expenses incurred in connection with each project had to be capitalised and allowed against the sale proceeds received on the completion of the project.

For the appellant company it was contended that —

(a) there was no requirement in law that property tax paid for the year ended December 31, 1974 must have produced income assessable to tax for the year of assessment 1975;

(b) the Comptroller of Income Tax erred in law in requiring that property tax be capitalised and allowed against the sale proceeds to be received on completion of the project;

(c) property tax is an item of revenue expense as distinct from a capital expense. It is in no way related to the acquisition of a capital asset nor does it enhance the value of property; and

(d) the properties being the appellant company's stocks in trade, property tax is properly a revenue expense incurred in the maintenance of those stocks.

The sole issue for determination in this appeal relates to the proper treatment of property tax paid by the appellant company in respect of properties purchased for development. Of primary importance is the question whether the company was wrong in its previous treatment of property tax payments.

Reasons for change

On behalf of the appellant company, various reasons were given for the change in treatment of property tax, the chief of which was that because of the

slump in the property market in 1974, doubts were cast about market conditions and the future viability of various projects which were halted. Development costs would thus be increased by the addition of property tax although no development work was being carried out. The value of the stock in trade would thus be overstated.

The company was further advised by its tax advisers that it did not have to "capitalise" property tax because such tax is in no way related to the acquisition of a capital asset, nor did it enhance the value of the properties. Furthermore, since property tax was a revenue expense incurred in the maintenance of the company's stock in trade, it should not be capitalised.

Mr. Anthony John Coomber, a partner in a well established firm of accountants in Singapore, was of the opinion that the company's treatment of property tax for the year 1974 was consistent with ordinary principles of commercial accountancy. Since property tax did nothing to enhance the value of a property and produces no benefit lasting beyond the period it is paid, it is not an expense incurred in bringing that property to its present location and condition. He further stressed that the fact that property tax had not been included in the cost of development in no way detracted from the "completed contract" method.

He found support for his opinion in the "Statement of Standard Accounting Practice No. 9" (SSAP 9) issued by the Institute of Chartered Accountants in England and Wales, and in "Exposure Draft No. 12 of the International Accounting Standard". He expressed the opinion that in view of the standards set out therein, it would now be incorrect to defer property tax. However, while maintaining that deferring property tax is "incorrect", he would nevertheless "allow a client to defer property tax where it is formed only to develop one property".

On behalf of the respondents, Mr. Yip Thin Peng, Senior Assessment Officer at the Inland Revenue Department, testified that to his knowledge property development companies in Singapore adopt the completed contracts method. In so doing, they have treated property tax as part of the costs of development so as to be able to arrive at the true profits of each project.

Since property tax is suffered by the company in maintaining its stock in trade, a developer who develops land would take into account the amount of property tax paid in arriving at the cost of each unit sold. In his view "the practice of capitalising property tax is in accordance with normal accounting practice".

He added that a development company is assessed "on a project to project basis as it is completed, not as a whole", although it is taxed from its whole business. He concluded that the practice of housing developers in "capitalising" property tax is not inconsistent with standards set out in SSAP 9 and Exposure Draft 12.

It is perhaps pertinent to point out that the "Statement of Standard Accounting Practice No. 9" merely "seeks to define the practices, to narrow the differences and variations in those practices and to ensure adequate disclosure in the accounts". The Exposure Draft 12 of IAS remains a draft issued solely for comment by the International Accounting Standards Committee.

It must be borne in mind that the effect of not "expensing off" property tax payments in the year they are paid is that they are deferred until completion of the projects in respect of which they are paid, at which time they are taken into account in computing the profits or loss of the projects concerned.

Considering the evidence before us and the submissions of counsel, we are of the view that the accumulation of property tax payments by the company pending the completion of the projects in respect of which they are paid, is not inconsistent with ordinary principles of commercial accounting where the "completed contract cost" method of accounting is adopted. We do not accept Mr. Coomber's opinion that such a treatment would only be proper in respect of the accounts of single-development companies.

Onus on appellants

It has been clearly established that if a particular method of accounting has been applied consistently in the past it should not be changed, unless good reason is shown for that change (see *Duple Motor Bodies Ltd.* v. *Ostime*,[1] cited with approval in *BSC Footwear Ltd.* v. *Ridgway*[2]). The onus of proving that there was good reason for the change falls on the person seeking it.

Lord Morris of Borth-y-Gest in *BSC Footwear* succinctly put the position which we rely upon at page 528 of the report: —

"For many years the company have kept their accounts on a particular basis. The Crown with appreciation of it have accepted it. The onus must be upon the Crown to show that the basis is unacceptable and must be changed. As between competing methods and practices of commercial accounting a mere preference for one should not give it priority if the others are not open to objection. What must in the present case be considered is whether the basis which the company adopted was or was not a basis which would show the full amount of the profits or gains of a particular year...."

While we agree with the appellants that what they seek is not a change in method of accounting but merely a change in treatment of an item of expense, they must nevertheless show good reason for this change, unless of course the former treatment is wrong.

The appellants have ever since their incorporation until 1973, maintained their accounts on the basis that property tax payments are accumulated and deferred. This is the basis which other housing developers in Singapore adopt and is accepted by the respondent. While it is accepted that the appellants are not assessed to tax on an individual project basis, it is only on the completion of each project that the gross profits of each is known and subject to tax.

The onus being on the appellants to satisfy the Board that their former treatment of property tax was wrong and must be changed, we are of the opinion that they have not discharged that onus and that the Comptroller was justified in disallowing the deduction claimed.

We accordingly dismiss the appeal with costs.

(The appellant company appealed against the decision of the Board which was dated May 16, 1979).

DISTRICT COURT APPEAL.

Andrew Ang for the appellant.

Loo Lian Ee (Miss) (State Counsel) for the respondent.

Cur. Adv. Vult.

Chua J.: This appeal arises from a Notice of Assessment dated June 30, 1976, for Year of Assessment, 1975, against which assessment the appellant company (the company) appealed to the Income Tax Board of Review (the Board) which dismissed the appeal with costs. The company now appeals to this court.

The company was incorporated on April 15, 1970, as a public company, and carries on business as a housing developer. Since its incorporation the company purchased various parcels of land, some of which were developed while the others were held in its "land bank". As a consequence of a slump in the property market prevailing in Singapore around 1974, several development projects were halted in mid-stream and were delayed for about five years.

In its accounts pertaining to its various development projects the company has adopted the "completed contract" cost accounting system, whereby profit is recognised only when the contract or project is completed. Under this system, expenditure incurred in a development together with receipts from booking fees and progress payments are accumulated during the course of the project and profit is not reported until the project is substantially completed.

Each project is treated separately and individual cost records are kept for each project. Development expenses are then capitalised in the balance sheet and are accumulated and carried forward from year to year until the project is completed. Upon completion all the expenses attributable to a particular project are deducted from proceeds of sale, with net profits assessed to tax.

For the accounting years 1970 to 1973 property tax incurred annually in respect of properties held by the company was "capitalised" in the balance sheet as part of the overall development expenditure and did not appear in the profit and loss accounts.

However, for the financial year 1974, payments of property tax were for the first time treated as an item of expenditure and charged into the debit side of the profit and loss account. Property tax amounting to $253,980 was claimed as an item of allowable expenditure under section 14 of the Income Tax Act (Cap. 141) (the Act) against income of the company.

This change of treatment of property tax payment was not allowed by the Comptroller of Income Tax (the Comptroller) on the grounds that: —

(i) the property tax paid was not in the production of income assessable to tax for Year of Assessment, 1975;

(ii) the property tax had been paid in respect of properties that were being developed and should therefore form part of the costs of development;

(iii) as the development projects were dealt with on a project basis, all direct expenses incurred in connection with each particular project had to be capitalised and allowed against the sale proceeds received on the completion of the project.

The main point of issue is ground (ii) of the Comptroller.

The dispute in this appeal is concerned not with the question whether the property tax is an allowable deduction *per se* but rather with the question of when the property tax should be allowed as a deduction.

The company contends that the property tax of $253,980 paid in 1974 in respect of its properties is deductible in the Year of Assessment, 1975. The Comptroller, on the other hand, does not dispute that property tax is a revenue expense that is deductible under the Act. He is disputing only the time when the property tax should be deducted. It is the Comptroller's contention that on the basis of the "completed contract" method of accounting adopted by the taxpayer, the property tax in respect of each development project is deductible only upon the completion of that development project.

The company is charged to tax under section 10(1)(a) of the Act, which provides, *inter alia*, that "income tax shall be payable for each year of assessment upon the income of any person in respect of — gains or profits from any trade, business, profession or vocation...". The resolution of the dispute in the present appeal necessitates an examination of the proper method of computing the company's profits or gains for the Year of Assessment, 1975. The Act is silent as to the proper methods of computation.

Let us look at the reasons why the company changed its previous treatment of property tax.

Reasons for change

Various reasons were given for the change. The main one was that because of the slump in the property market in 1974 doubts were cast about market conditions and the future viability of various projects which were halted. Development costs would thus be increased by the addition of property tax although no development work was being carried out. The value of the stock-in-trade would thus be overstated.

Another reason was that the company was advised by its tax advisers that it did not have to "capitalise" property tax because such tax is in no way related to the acquisition of a capital asset, nor did it enhance the value of the properties. Furthermore, since property tax was a revenue expense incurred in the maintenance of the company's stock-in-trade, it should not be capitalised.

Mr. Anthony John Coomber, a practising chartered accountant with a well-established firm of accountants in Singapore, said in evidence that he had seen the accounts of the company for 1974; that from his perusal, although it did not show any accounting policy used, it appeared to have used completed contracts accounting basis; that it was the most conservative

method of computing contracts covering more than one year; and that revenue was recognised when contract was completed or substantially completed.

He further said that from the perusal of the Profit & Loss Account it would appear the property tax had been expensed under Profit and Loss Account. He stressed that such a treatment of property tax was not inconsistent with commercial accounting practice and that it was not inconsistent with completed contract accounting basis. He said that property tax should never be capitalised as it did nothing to enhance the value of the property concerned and was paid solely in the period it became payable and certainly produced no benefit lasting beyond such period.

He further said that comparing the accounts for 1974 with previous years, the change in the treatment was not wrong, not by itself but there should have been a correction shown of previous years' wrong. This had not been done.

He said that the "Statement of Standard Accounting Practice No. 9" (SSAP 9) (Exhibit 1) and "Exposure Draft No. 12 of the International Accounting Standard" (Exhibit 2) supported his views that the properties of the company should be treated as trading stocks.

SSAP 9 was issued by the Institute of Chartered Accountants in England and Wales in May 1975, and Exhibit 2 was issued in December 1977. He expressed the view that in view of the standards set out therein, it would now be incorrect to defer property tax, but however, he said in cross-examination that the only instance where he would allow a client to defer property tax was where it was formed only to develop one property.

Mr. Yip Thin Peng gave evidence on behalf of the Comptroller. He is qualified as a certified accountant and is the Senior Assessment Officer in the Inland Revenue Department. He has been in the Department for sixteen years and in the course of his work he had had experience in dealing with files of property developers.

He testified that two methods were normally used to reflect profits — (1) by completed contracts method and (2) by the percentage of completion method.

Under the first method costs of development were accumulated in respect of each project. When completed, profits would be brought into the Profit & Loss Account and assessed for tax. Expenses should be deferred for matching revenue with expenses.

Under the second method a company would take account of the progress of development. It would bring in part of the profits earned over the years during which the contracts run. Part of the profits would be assessed to tax.

He said that most property development companies in Singapore adopted the completed contracts method. In so doing, they have treated property tax as part of the costs of development so as to be able to arrive at the true profits of that project and that the company has adopted the completed contracts method.

Since property tax was suffered by the company in maintaining its stock-in-trade, a developer who developed land would take into account the amount of property tax paid in arriving at the cost of each unit sold. In his view the "practice of capitalising property tax is in accordance with normal accounting practice."

He added that a development company was assessed "on a project to project basis as it is completed, not as a whole", although it was taxed from its whole business.

He said that there was nothing in the accounts of the company to explain the change in the accounting policy. He expressed the view that the change was made to gain a tax savings of over $100,000, and said that 1974 was the first year the company reported profits.

He expressed the view that the practice of housing developers in "capitalising" property tax was not inconsistent with standards set out in SSAP 9 and Exposure Draft 12 (Exhibit 2) and that it was not wrong for a company to change its practice to mitigate tax loss if it conformed to current accounting practice.

The Board in their grounds of decision said:

"Considering the evidence before us and the submission of counsel, we are of the view that the accumulation of property tax payments by the company pending the completion of the projects in respect of which they are paid, is not inconsistent with ordinary principles of commercial accounting where the 'completed contract cost' method of accounting is adopted. We do not accept Mr. Coomber's opinion that such a treatment would only be proper in respect of the accounts of single-development companies."

The company contends that the Board erred in law and on the facts in holding that the onus was upon the company to satisfy the Board that the company's former treatment of property tax was wrong and had to be changed. It says that the real test was whether its new treatment of property tax payments was in accordance with "ordinary principles of commercial accountancy."

The Board was of the view that of primary importance was the question whether the company was wrong in its previous treatment of property tax payments. The Board found that

"it had been clearly established that if a particular method of accounting has been applied consistently in the past it should not be changed, unless good reason is shown for that change (see *Duple Motor Bodies Ltd.* v. *Ostime*, cited with approval in *BSC Footwear Ltd.* v. *Ridgway*). The onus of proving that there was good reason for the change falls on the person seeking it."

Counsel for the company contends that the Board has applied the wrong test. He submits that there are two tests applicable — (i) whether the profits of the company in the year in question were arrived at in accordance with the ordinary principles of commercial accountancy and (ii) whether the deduction of property tax violates any tax statute. Counsel says that he does not discard entirely this so-called "consistency principle" but what he submits is that in the present case the consistency principle is inapplicable for the reasons that there was no change in the company's method of accounting but merely a change in the treatment of one item namely property tax. He

concedes that where there is a change in method the consistency principle is applicable and argues that when it becomes applicable it is not a third test, it is merely part and parcel of the first test namely whether the deduction is in accordance with the ordinary principles of commercial accountancy and that consistency is one of the principles to be observed in commercial accountancy. Counsel says that if it is found that there is a change in method then the company says that it has good reasons.

Under section 80(3) of the Act a taxpayer who disputes the Comptroller's assessment must prove that the assessment is excessive. The law as regards the taxpayer's onus of proof in an income tax appeal was summarised succinctly by the Privy Council in *Minister of National Revenue* v. *Anaconda American Brass Ltd.*[3] wherein Viscount Simonds stated (page 22):

"The question, then, is whether the Minister correctly assessed the annual net profit or gain of the company for 1947 or, to state the question more accurately, whether the company has established that his assessment was incorrect."

The onus is therefore on the company to prove that the Comptroller's assessment is wrong. In a dispute where the ascertainment of the taxpayer's income for any year involves the application of computing methods or practices of accounting, the taxpayer can only discharge his onus under section 80(3) by proving that the accounting practice on which the Comptroller has based his assessment is wrong. In my view it is not sufficient for the taxpayer merely to prove that the taxpayer's practice is also correct. In this case the company must go further and prove that its former method of accumulating property tax in respect of each project until the completion of the particular housing project was wrong and should be changed.

The Board is quite correct that if a particular method of accounting has been applied consistently in the past it should not be changed unless good reason is shown for that change. The principle of consistency established by Lord Reid in *Duple Motor Bodies Ltd.* v. *Ostime* should be observed. Lord Reid said (page 572):

"One thing clearly emerges as approved by the accountancy profession — whatever method is followed, it must be applied consistently. I accept that. So the real question is what method best fits the circumstances of a particular business. And if a method has been applied consistently in the past, then it seems to follow that it should not be changed unless there is good reason for the change sufficient to outweigh any difficulties in the transitional year."

The principle of consistency was approved and applied in the later House of Lords case of *BSC Footwear Ltd.* v. *Ridgway.* In that case the taxpayer had applied a particular method of valuing stock-in-trade consistently over a number of years. The Crown with appreciation of it had accepted it, but in the year of assessment under dispute the Crown sought to substitute a new method of valuation. It was held that the onus was on the party seeking the change in the accountancy method to justify the change on the ground that the old method was wrong. It was conceded by counsel for the Crown that in such a situation the Crown could only succeed if it could be proved that the method that had been consistently applied was wrong.

In the present case the method of accumulating property tax in the balance sheet had been applied consistently by the company since its incorporation in 1970. It is the company who is seeking a change in the accounting treatment of property tax, and, therefore, it is the company which must prove that the former method was wrong. The Board had directed itself correctly in law in holding that the question of primary importance was whether the company was wrong in its previous treatment of property tax payments. The company's contention that the real test was whether its new treatment of property tax payments in the year in question was in accordance with ordinary principles of commercial accountancy is misconceived.

The Board also held that

"while we agree with the appellants that what they seek is not a change in method of accounting but merely a change in treatment of an item of expense, they must nevertheless show good reason for this change, unless of course the former treatment is wrong."

The company contends that this ruling of the Board is wrong in that the principle of consistency is applicable only where there has been a change in method and once the Board has found that there had been no change in method but merely in the treatment of an item of expense the company was not required to show good reason for the change.

In the *Duple Motor Bodies* case Lord Reid was using the word "method" to describe the process by which the cost of work-in-progress was to be valued. That process involved the determination of whether items of overhead expenditure could be included in the cost. The taxpayer was not changing from one method of valuation to another entirely different method, such as from the "cost or market value method" to the "Base Stock Method". The taxpayer had all along used the cost or market value method. What was in dispute in that case was whether certain items of overhead expenditure should be included in the cost of work-in-progress. Similarly in the present case we are dealing with the determination of the cost of work-in-progress and stock-in-trade to be accumulated in the balance sheet. The issue here is whether an expense such as property tax should be included in the cost of the work-in-progress and stock-in-trade. The problem in these two cases is similar and the *dictum* of Lord Reid is applicable to the present case.

The company says that the Board erred in law and fact in failing to find that the company had shown good reasons for the change and that the Board's finding and decision were against the weight of evidence.

The main ground of objection is that the Board was wrong in that it failed to give reasons for the rejection of the evidence of its expert witness, Mr. Coomber, in preference for the evidence of the Comptroller's expert witness, Mr. Yip.

The Board was entitled in law to reject the accountancy evidence given by Mr. Coomber. It is an established principle that the ascertainment of a taxpayer's income for tax purposes is primarily a question of law for the sole decision of the court. In determining

the proper tax treatment of a transaction the court may have recourse to the evidence of accountants. But the evidence of accountants, in itself, can never be conclusive on a question of law. (See *Heather* v. *P-E Consulting Group Ltd.*,[4] at pages 322 and 323).

To succeed in this appeal the company must prove that the Comptroller's assessment is incorrect. The Comptroller's assessment is based on the company's previous treatment of accumulating the property tax payments. So to establish that the Comptroller's assessment is incorrect the company has to prove that its previous method of accumulating property tax was wrong. The primary issue is, therefore, as correctly stated by the Board, whether the company was wrong in its previous treatment of property tax payments.

The primary issue is a question of law for the Board alone to decide. In determining this question of law the Board has to look at all the facts, and consider the accountancy evidence. Lord Denning in *Heather* v. *P-E Consulting Group Ltd.* said (page 322):

"The courts have always been advised greatly by the evidence of accountants. Their practice should be given due weight; but the courts have never regarded themselves as being bound by it. It would be wrong to do so."

And Lord Buckley in the same case stated (page 323):

"Skilled accountants may well be much better qualified than most judges to formulate and explain such principles; but nevertheless in every case of this kind it is the judge and not the witness who must decide whether a witness's evidence in fact exemplifies sound accountancy principles. A judge may, as Lord Wilberforce did in *Strick* v. *Regent Oil Co. Ltd.* 43 T.C. 1, reject the accountant's evidence, or he may accept it."

Having heard and seen the witnesses the Board was entitled to accept the evidence of one accountant in preference to the evidence of the others. I am unable to say that the Board was wrong in preferring the evidence of Mr. Yip to that of Mr. Coomber and the other witnesses for the company.

In my view the Board was justified in deciding that "considering the evidence before us and the submissions of counsel, we are of the view that the accumulation of property tax payments by the company pending the completion of the projects in respect of which they are paid, is not inconsistent with ordinary principles of commercial accounting where the 'completed contract cost' method of accounting is adopted."

The company contends that the Board erred in law and fact in failing to find that the company had shown good reasons for the change in its treatment of property tax.

The reasons brought forward by the company before the Board did not justify a change in its treatment of property tax and the Board was correct in holding that the company had failed to discharge the onus that its former treatment of property tax was wrong and must be changed.

In the result this appeal fails and is dismissed with costs.

Appeal dismissed.

Solicitors: *Lee & Lee.*

ZAINOON v. MOHAMED ZAIN

[Appeal Board (Mohamed Abdullah, Chairman, Mohamed Ariff bin Ahmad & Mohamed Harith bin Mohamed Kassim, Members) July 30, 1980]

[Singapore — Shariah Court Appeals Nos. 1 & 2 of 1978]

Islamic Law — Divorce — Claim for contribution towards setting up of matrimonial home — Harta sapencarian — Claim for muta'ah — Administration of Muslim Law Act (Cap. 42), ss. 35(3) & 42.

Malay customary law — Malay custom in Singapore — Adat Temenggong — Harta sapencarian.

In this case the parties were married in April 1959. In 1969 the respondent bought a house in his own name and for this purpose he took a loan from the Government and from the Syarikat Guru-Guru Melayu. There were differences between the parties and in November 1977 the respondent divorced the appellant by one *talak* and subsequently applied to the Shariah Court to register the divorce. In the course of the proceedings the appellant claimed that she had spent about $11,000 to renovate the house and she claimed her share back. The respondent denied that the appellant made any contribution towards the purchase of the house. The appellant also claimed *muta'ah* or consolatory gift.

The learned President of the Shariah Court found that the divorce was validly pronounced and ordered that it be registered. He also ordered the respondent to refund to the appellant the sum of $3,666.00 being her contribution towards the setting up of the matrimonial home and a sum of $700 as consolatory gift.

The learned President held that the evidence of both parties was unsatisfactory. As there was a dispute as to properties acquired after the marriage, both parties should normally take the oath and the property would then be equally divided between them. In this case however as the fixtures and fittings were bought more than nine years ago and as their value had depreciated, the learned President ordered the respondent to pay one-third of the claim. As regards the claim for the consolatory gift, he found that even if the appellant was at fault in deserting the matrimonial home, it was the husband who pronounced the *talak*. He therefore ordered the respondent to pay $700.00 as consolatory gift.

The appellant appealed against the quantum of the awards and the respondent appealed against the orders for payment.

Held: (1) the appellant had not discharged the burden of proof to show that the property was jointly acquired by the spouses or by their joint efforts;

(2) the principle of *harta sapencarian* was not applicable in this case but the appellant was entitled to a refund of the sums she had contributed. The quantum of the appellant's interest should be fixed at one-half of $11,000 that is $5,500;

(3) as it was the appellant who deserted the matrimonial home and she was the party in default, she was not entitled to the *muta'ah* or consolatory gift.

Obiter dicta: The Board takes judicial notice that the Malay custom in Singapore is *Adat Temenggong* and that it is much the same as that found in the States of Malaya particularly Johore. The Board therefore is prepared to take judicial notice that the principle of *harta sapencarian* is part of the Malay custom in Singapore.

Cases referred to:-

(1) *Roberts* v. *Ummi Kalthom* [1966] 1 M.L.J. 163.

(2) *Mohamed* v. *Commissioner of Lands and Mines, Trengganu & Anor.* [1968] 1 M.L.J. 227.

(3) *Bongah* v. *Mat Din* (1937) 15 JMBRAS 16.

(4) *Tijah* v. *Mat Alli* (1937) 15 JMBRAS 15.

SHARIAH COURT APPEAL.

J.B. Jeyaretnam for the appellant.

Syed Ahmad Helmy Dahlan for the respondent.

Cur. Adv. Vult.